

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FARMERS AND RANCHERS
COOPERATIVE ASSOCIATION, INC.,

Plaintiff,

vs.

No. 4:12-cv-00409-SWW

TOM VILSACK, SECRETARY,
UNITED STATES DEPARTMENT
OF AGRICULTURE,

Defendant.

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ORDER

Plaintiff Farmers and Ranchers Cooperative Association, Inc. (Farmers), filed this *pro se* action against Tom Vilsack, Secretary, United States Department of Agriculture (USDA) in the Circuit Court of Lonoke County, Arkansas, on June 1, 2012. Farmers's complaint is signed by Dwight Ellis Brooks, a nonlawyer. The USDA removed the action to this Court and it was assigned to United States District Judge Kristine G. Baker.

On July 12, 2012, the USDA filed a motion to dismiss, and in the alternative, for summary judgment [doc.#4]. Farmers did not respond to the USDA's motion. On July 16, 2012, "Plaintiff, Dwight Ellis Brooks as President and agent of Farmers and Ranchers Cooperative Associates, Inc." filed a motion for disqualification of Judge Baker and the Assistant United States Attorney representing the USDA [doc.#6]. In the meantime, Judge Baker, noting that corporations and other business entities cannot proceed *pro se*,

see *Ackra Direct Marketing Corp. v. Fingerhut Corp.*, 86 F.3d 852, 857 (8th Cir. 1996), entered an Order on October 24, 2012 [doc.#7], giving Farmers until November 26, 2012 to retain counsel to represent it in this matter. Judge Baker notified Farmers that if it failed to retain counsel by that time, this action will be dismissed. Judge Baker stated she would hold the motion for disqualification in abeyance until plaintiff obtains counsel.

On November 20, 2012, Brooks filed an amended complaint in the Circuit Court of Lonoke County and it was filed in this Court on November 27, 2012 [doc.#8]. The amended complaint names Farmers and Brooks as plaintiffs and names the USDA and Judge Baker as defendants. Apparently in response to that amended complaint, and apparently assuming the amended complaint was a properly filed and viable complaint, the Assistant United States Attorney representing the USDA filed on December 18, 2012 a motion to dismiss [doc.#9] on behalf of Judge Baker.

On December 20, 2012, Brooks filed another amended complaint (hereinafter, second amended complaint) in the Circuit Court of Lonoke County and it was filed in this Court on December 28, 2012 [doc.#11]. This second amended complaint names Farmers and Brooks as plaintiffs and names as defendants the USDA, Judge Baker, William Riley, and Eric Holder. There has been no responsive pleading to this second amended complaint.

On February 1, 2013, Judge Baker recused because she has been named a party defendant and the action was reassigned to this Court [doc.#12]. By Order and Judgment entered February 15, 2013 [doc.#'s 13, 14], the Court dismissed this action as no attorney

entered an appearance on behalf of Farmers.¹ That same day, however, the Court entered an Order [doc.#15] vacating the Order of dismissal and Judgment and directed that this action be reopened as “[s]everal issues remain, including the propriety of the amended complaints filed on November 27, 2012 [doc.#8] and December 28, 2012 [doc.#11], and the status of the plaintiff(s) and defendants named therein.”²

I.

The Court denies the motion of “Plaintiff, Dwight Ellis Brooks as President and agent of Farmers and Ranchers Cooperative Associates, Inc.” for disqualification of Judge Baker and the Assistant United States Attorney representing the USDA [doc.#6] as Judge Baker is no longer assigned to this action and Brooks’s claims of “personal bias and prejudice” on the part of the Assistant United States Attorney representing the USDA are conclusory and he does not set forth any specific instances of alleged prejudice or bias.³ Because Judge Baker is no longer assigned to this action, her motion to dismiss [doc.#9] is denied as moot.

II.

¹ Only Farmers is listed as a plaintiff on the Court’s docket sheet.

² The Court informed the parties that they might consult *Trail Dr., LLC v. Silver Hill Financial, LLC*, No. 4:11cv00173, 2011 WL 4002247, *4 (E.D. Ark. Aug. 31, 2011) (*citing First Commercial Bank, N.A. v. Walker*, 333 Ark. 100, 110-111, 969 S.W.2d 146, 151 (1998)), which may or may not be applicable.

³ In his motion for disqualification, Brooks refers to an “affidavit on 06/29/2012 filed in the Pulaski County Circuit Court” but no such affidavit is in the record. Of course, this action was removed from the Lonoke Circuit Court.

The Court orders that within twenty (20) days of the date of this Order, the Assistant United States Attorney representing the USDA file a pleading or motion addressing the remaining issues in this action, including (1) whether the amended and second amended complaints were properly filed (taking into account, *inter alia*, Fed.R.Civ.P. 15 and Local Rule 5.5(e) of the United States District Court for the Eastern and Western Districts of Arkansas), (2) the status of the previously filed motion to dismiss, and in the alternative, for summary judgment [doc.#4] in light of the amended and second amended complaints, and (3) the current status of the plaintiff(s) and defendant(s). Brooks may respond to the United States's pleading or motion but he must do so within twenty (20) days of the date of entry of the Assistant United States Attorney's pleading or motion.

IT IS SO ORDERED this 7th day of February 2013.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE